

REMARKS

1. In response to the Office Action mailed June 23, 2010, Applicants respectfully request reconsideration. Claims 1, 3, 4, 6-14, 17-23 and 26-31 were last presented for examination. In the outstanding Office Action, claims 1, 3, 4, 6-14, 17-23 and 26-31 were rejected. By the foregoing Amendments, claims 1, 4, 9, 10, 13, 14, 19-22 and 31 have been amended, claims 7, 8, 11, 12, 17, 18, 23 and 26-29 have been cancelled, and claims 32-41 have been added. Upon entry of this paper, claims 1, 3, 4, 6, 9, 10, 13, 14, 19-22 and 30-41 will be pending in this application. Of these twenty-four (24) claims, three (3) claims (claims 1, 31 and 36) are independent.

2. Based upon the above Amendments and following Remarks, Applicants respectfully request that all outstanding objections and rejections be reconsidered and withdrawn.

Drawings

3. Applicants thank the Examiner for indicating that the drawings submitted on February 9, 2005, have been accepted.

Claim Rejections under §102

4. In the previous Office Action mailed February 24, 2010, (hereinafter referred to as the “previous Office Action”), claims 1, 3, 4, 6-14, 17-23 and 26-30 were rejected under 35 U.S.C. 102(b) as allegedly being anticipated by U.S. Patent Publication No. 2002/0019669 to Berrang et al. (hereinafter, “Berrang”). In particular, the Examiner asserted that housing section 3, coil 4 and corrugated cables 7 and 8 of Berrang are all flanges extending outwardly from a housing section 2 of Berrang. (*See*, previous Office Action, pgs. 2-3.)

5. In the Response submitted May 24, 2010, (hereinafter referred to as the “Response”), Applicants asserted that housing section 3, coil 4, and cables 7 and 8 are not within the ordinary and customary meaning of the term “flange.” Specifically, Applicants asserted that none of these elements is “a flat surface sticking out from an object, which is used to fix it to something or to make it stronger.” (*See*, Cambridge Dictionary Online, “flange,” <http://dictionary.cambridge.org/british/flange>.) In addition, Applicants submitted that housing section 3, which includes a ceramic substrate, is not a pliable flange that is bendable by hand.

6. In the outstanding Office Action mailed June 23, 2010 (hereinafter referred to as the “outstanding Office Action”), the Examiner rejects the above arguments. Specifically, the Examiner asserts that housing section 3, coil 4, and cables 7 and 8 of Berrang are each relatively flat and stick out from housing section 2 and therefore meet the definition of a flange. (*See*, current Office Action, pg. 2.) In addition, the Examiner now asserts that housing section 3 and coil 4 are bendable by hand because they each “include portion 6, which is ‘pliable (or bendable).’” (*See*, outstanding Office Action, pg. 3.) For the reasons provided below, Applicants respectfully submit that Berrang does not disclose or render obvious all elements of Applicants’ claims 1 and 31. Accordingly, reconsideration and withdrawal of these rejections is respectfully requested.

Claim 1

7. As previously noted, Berrang is directed to a totally implantable cochlear prosthesis including an implanted part 1 having two housing sections 2 and 3 connected by a bridge 6. (*See*, Berrang, paras. [0068]-[0069]; and FIG. 1.) The prosthesis further includes a microphone and an electrode array having connectors that enter the bridge. (*See*, Berrang, paras. [0023] and [0068].) Housing section 2 includes a battery 18 and a ceramic substrate 24 on which internal components are mounted. (*See*, Berrang, paras. [0077] and [0079]; FIG. 2.) Similarly, housing section 3 includes electronics 21 and a ceramic substrate 25 on which the internal components are mounted. (*See*, Berrang, paras. [0077] and [0079]; FIG. 2.)

8. As amended, Applicants’ claim 1 recites, in part, “a low profile hermetically sealed housing encasing electronics configured to generate stimulation signals for application to the recipient, having at least two pliable flanges extending outwardly from substantially opposite sides of the housing.” (*See*, Applicants’ claim 1, above.) In the outstanding Office Action, the Examiner equates housing section 2 of Berrang with the housing recited in Applicant’s claim 1, and asserts that section 3, coil 4 and cables 7 and 8 of Berrang are all “flanges” extending outwardly from housing section 2. Applicants respectfully disagree with these assertions. However, regardless of whether any of housing section 3, coil 4 and cables 7 and 8 may be considered a flange, Applicants submit that Berrang fails to disclose that any two of these elements “extend[] outwardly from substantially opposite sides of the housing.” (*See*,

Applicants' claim 1, above; emphasis added.) Rather, as illustrated in FIG. 1 of Berrang, housing section 3, coil 4 and cables 7 and 8 each extend from bridge 6, which extends from only one side of housing section 2.

9. Additionally, Applicants respectfully submit that bridge 6 of Berrang cannot be considered to be equivalent to the "housing" recited in Applicants' claim 1. Although Berrang discloses an embodiment in which connectors of a microphone and an electrode array enter the bridge, (*see*, Berrang, para. [0023]), Berrang fails to disclose that bridge 6 "encas[es] electronics configured to generate stimulation signals for application to the recipient," as recited in Applicants' claim 1. As such, Applicants submit that Berrang fails to disclose all elements of Applicants' claim 1 for this additional reason, regardless of which sides of the bridge housing section 3, coil 4 and cables 7 and 8 extend from.

10. As noted above, the Examiner asserts in the outstanding Office Action that housing section 3 is bendable by hand because it includes bridge 6 "which is 'pliable (or bendable).'" (*See*, current Office Action, pg. 3.) As amended, Applicants' claim 1 further recites, in part, "wherein each of the at least two flanges is bendable by hand **across its entire length.**" (*See*, Applicants' claim 1, above; emphasis added.) Applicants submit that the combination of housing section 3 and bridge 6 are not equivalent to the claimed "flange" because housing section 3 is not bendable by hand. Rather, as noted above, Berrang discloses that housing section 3 includes a **ceramic substrate** 25 on which the internal components of housing section 3 are mounted. (*See*, Berrang, paras. [0077] and [0079]; FIG. 2.) As is well known in the art, ceramic substrates are brittle and are not "pliable" nor "bendable by hand." Accordingly, Applicants submit that one of ordinary skill in the art would understand that the combination of housing section 3, containing a brittle ceramic substrate, and bridge 6 is not "bendable by hand across its entire length." (*See*, Applicants' claim 1, above.)

11. For at least the reasons set forth above, Applicants submit that Berrang fails to disclose or render obvious all elements of Applicants' claim 1. As such, Applicants respectfully request that the rejection of claim 1 under §102 be reconsidered and withdrawn.

Claim 31

12. Applicants submit that Berrang fails to anticipate or render obvious Applicants' amended claim 31 at least for reasons similar to those discussed above in relation to Applicants' claim 1. More particularly, Applicants submit that Berrang fails to show "at least two pliable flanges extending outwardly from substantially opposite sides of the housing, wherein the housing encases electronics configured to generate stimulation signals for application to the recipient," as recited in Applicants' claim 31. (*See*, Applicants' claim 31, above.) Applicants submit that no two elements among housing section 3, coil 4 and cables 7 and 8 "extend[] outwardly from **substantially opposite sides**" of housing section 2. (*See*, Applicants' claim 31, above; emphasis added.) As such, Applicants respectfully request that the rejection of claim 31 under §102 be reconsidered and withdrawn.

New Claim 36

13. Applicants submit that Berrang fails to anticipate or render obvious Applicants' new claim 36 at least for reasons similar to those discussed above in relation to Applicants' claim 1. More particularly, Applicants submit that Berrang fails to show "a low profile hermetically sealed housing encasing electronics configured to generate stimulation signals for application to the recipient, and having at least two pliable flanges extending outwardly from substantially opposite first and second sides of the housing," as recited in Applicants' claim 36. (*See*, Applicants' claim 36, above.) Applicants submit that no two elements among housing section 3, coil 4 and cables 7 and 8 "extend[] outwardly from **substantially opposite first and second sides**" of housing section 2. (*See*, Applicants' claim 36, above; emphasis added.)

Dependent claims

14. The dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicants respectfully assert that the dependent claims are also allowable over the art of record.

CONCLUSION

15. In view of the foregoing, this application should be in condition for allowance. A notice to this effect is respectfully requested.
16. Applicant makes no admissions by not addressing any outstanding rejections or bases of rejections. Furthermore, Applicant reserves the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application. Thus, cancellations of and amendments to the above claims, are not to be construed as an admission regarding the patentability of any claims.

Dated: September 23, 2010

Respectfully submitted,

Electronic signature: /Michael G. Verga/
Michael G. Verga

Registration No.: 39,410
KILPATRICK STOCKTON LLP
607 14th Street, NW
Suite 900
Washington, DC 20005
(404) 815-6500
(404) 815-6555 (Fax)
Attorney for Applicant